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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

Transportation Insurance Company,

Plaintiff,

vs.

Central National Ins. Co. of Omaha, Pacific
Employers Insurance Company, and Acme
Trading Company of Portland

Defendants.

NO. 18-cv-00734-BR

PLAINTIFF'S ANSWER TO
COUNTERCLAIM OF DEFENDANT
ACME TRADING COMPANY OF
PORTLAND

Plaintiff Transportation Insurance Company ("Transportation"), by and through its attorneys of record, answers The Counterclaim of Defendant Acme Trading & Supply Company ("Acme") as follows:

COUNTERCLAIMS

1. Paragraph 1 of Acme's counterclaim does not contain allegations requiring a response from Transportation. To the extent an answer is required, Transportation denies the allegations in paragraph 1.

Page 1 – PLAINTIFF'S ANSWER TO COUNTERCLAIM OF
DEFENDANT ACME TRADING COMPANY OF PORTLAND

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2. Paragraph 2 of Acme's counterclaim does not contain allegations requiring a response from Transportation. To the extent an answer is required, Transportation denies the allegations in paragraph 2.

THE TRANSPORTATION POLICIES

3. Transportation admits issuing insurance policies to Acme. The policies are written contracts whose terms and conditions speak for themselves. Transportation denies any other or further allegation in paragraph 3.

4. Transportation admits issuing policies bearing numbers TBP 007 06 15 51, TBP 02 902 84 14 and TBP 60 238 76 25 and denies any other or further allegation in paragraph 4.

5. Paragraph 5 of Acme's counterclaim does not contain allegations requiring a response from Transportation. To the extent an answer is required, Transportation denies the allegations in paragraph 5.

6. Transportation admits that the Transportation policies included or were amended so as to include Acme as an insured entity subject to the terms and conditions of the policies. Transportation denies any other or further allegation in paragraph 6.

7. Transportation admits that the Transportation policies include the language quoted in this paragraph, which language is subject to the other terms, conditions, exclusions, and limits contained in the Transportation Policies. Transportation denies any other or further allegation in paragraph 7.

8. Transportation admits that the Transportation policies include the language quoted in this paragraph, which language is subject to the other terms, conditions, exclusions, and limits contained in the Transportation Policies. Transportation denies any other or further allegation in paragraph 8.

9. Transportation admits that the Transportation policies include the language quoted in this paragraph, which language is subject to the other terms, conditions, exclusions, and limits

contained in the Transportation Policies. Transportation denies any other or further allegation in paragraph 9.

10. Paragraph 10 contains legal conclusions to which no response is required. Transportation affirmatively states that its policies were exhausted by payment before Acme made a claim for coverage under the Transportation policies, and denies any other or further allegation in paragraph 10.

11. Paragraph 11 contains legal conclusions to which no response is required. Transportation affirmatively states that its policies were exhausted by payment before Acme made a claim for coverage under the Transportation policies, and denies any other or further allegation in paragraph 10.

THE TRANSPORTATION POLICIES

12. Transportation admits that the ODEQ sent the letter attached as Exhibit 3. The contents of the letter, which do not mention Acme or Acme's operation, speak for themselves. Transportation denies any other or further allegation in paragraph 12.

13. Transportation admits that the US EPA sent the letter attached as Exhibit 4. The contents of the letter speak for themselves. Transportation denies any other or further allegation in paragraph 13.

14. Transportation lacks information sufficient to form a belief as to truth of the allegations of this paragraph, and therefore denies them.

15. Transportation admits that Acme has incurred expenses in connection with actions by the ODEQ and US EPA. Transportation denies all other and further allegations in this paragraph.

16. Paragraph 16 consists solely of legal conclusions to which no response is required.

ACME'S NOTICE TO ITS INSURER OF THE ODEQ AND US EPA SUITS

17. Paragraph 17 includes allegations directed at another party, and to which no response is required. Transportation admits receiving notice of a claim on behalf of Acme in 2000, and admits responding to Acme's claim in October, 2000. Transportation denies any other or further allegation in paragraph 17.

18. Paragraph 18 includes allegations directed at another party, and to which no response is required. Transportation admits receiving a letter in or around March, 2010 relating to a claim for defense and indemnity for Acme against allegations in the US EPA General Notice Letter. The contents of the letter speak for themselves. Transportation denies any characterization of the letter inconsistent with its terms and denies any other and further allegation in paragraph 18.

19. Paragraph 19 includes allegations directed at another party, and to which no response is required. Transportation admits receiving a letter in or around March, 2010 relating to a claim for defense and indemnity for Acme against allegations in the US EPA General Notice Letter. The contents of the letter speak for themselves. Transportation denies any characterization of the letter inconsistent with its terms and denies any other and further allegation in paragraph 19.

20. Denied.

TRANSPORTATION'S COMMUNICATION AFTER NOTICE OF THE US EPA'S SUIT

21. Transportation admits discussing its claim of exhaustion in a letter dated October 20, 2011. The contents of that letter speak for themselves, and Transportation denies any other or further allegation in paragraph 21.

22. Transportation admits providing loss run information to Acme in 2000, and denies any other or further allegation in paragraph 22.

23. Denied.

24. Transportation lacks information sufficient to form a belief as to the truth of the allegations in paragraph 24 and therefore denies them.

25. Transportation admits sending a letter dated February 10, 2010 to Acme regarding its claims. The contents of that letter speak for themselves. By February 2010, Transportation's policy had been exhausted by payment and Transportation had already provided information sufficient to demonstrate exhaustion. Transportation denies any other or further allegation in paragraph 25.

26. Paragraph 26 includes allegations directed at another party, and to which no response is required. Transportation admits receiving a letter in or around February 23, 2012. By this time, Transportation's policy had exhausted by payment and Transportation had provided information sufficient to demonstrate exhaustion. Transportation denies any other or further allegation in paragraph 26.

27. Paragraph 27 includes allegations directed at another party, and to which no response is required. Transportation admits receiving a letter in or around April 25, 2014 from Acme, the contents of which speak for themselves. Transportation admits sending a letter dated May 30, 2014 in response, and the content of that letter also speak for themselves. Transportation avers it provided further details regarding its loss run information in March , 2015, and denies any other or further allegation in paragraph 27.

28. Paragraph 28 includes allegations directed at another party, and to which no response is required. Transportation admits receiving a request from Acme for permission to share confidential information regarding a policyholder other than Acme with Pacific and Central National. Transportation admits providing that information to Pacific and Central National after being satisfied that the information was adequately protected from further disclosure, and that disclosure to Pacific and Central National would not harm the interests of Transportation's policyholders. Transportation denies any other or further allegation in paragraph 28.

29. Admitted.

30. Admitted.

31. Transportation lacks information sufficient to confirm or deny the truth of the allegations in paragraph 31, and therefore denies them.

32. Transportation admits that Acme's counsel sent a letter to the Oregon Department of Consumer and Business Services making the allegations described in this paragraph. Transportation denies those allegations and any other or further allegation in paragraph 32.

FIRST CLAIM FOR RELIEF

Breach of Contract Against Transportation

33. This paragraph restates allegations made in prior paragraphs by reference. Transportation incorporates its answers to each of those allegations by reference.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

SECOND CLAIM FOR RELIEF

Unfair Environmental Claims Settlement Practices – ORS 465.484 et seq. Against Transportation

38. This paragraph restates allegations made in prior paragraphs by reference. Transportation incorporates its answers to each of those allegations by reference.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

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THIRD CLAIM FOR RELIEF

Declaratory Judgment Against Transportation

43. This paragraph restates allegations made in prior paragraphs by reference. Transportation incorporates its answers to each of those allegations by reference.

44. Denied.

45. Denied.

PRAYER FOR RELIEF

Transportation denies all of the allegations contained in Acme's Prayer for Relief, and deny it is entitled to the relief it seeks against Transportation.

DATED this 19th day of December, 2019.

BETTS, PATTERSON & MINES, P.S.

By /s/ Jeremy R. Schulze

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*Attorneys for Transportation Insurance
Company*

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and the document is available for viewing and downloading from the CM/ECF system.

DATED this 19th day of December 2019.

BETTS, PATTERSON & MINES P.S.

By /s/ Jeremy R. Schulze
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